

JAMES W. PHILLIPS

IBLA 85-428

Decided May 13, 1986

Appeal from the decision of the Idaho State Office, Bureau of Land Management, declaring two lode mining claims null and void ab initio. IMC 100012 and IMC 100015.

Affirmed in part, reversed in part.

1. Mining Claims: Extralateral Rights -- Mining Claims: Lands Subject to -- Mining Claims: Lode Claims

Mining claims wholly located on lands patented without a mineral reservation to the United States are properly declared null and void ab initio. However, a lode mining claim located partially on withdrawn or patented land is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

APPEARANCES: James W. Phillips, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James W. Phillips appeals the January 28, 1985, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring lode mining claims "Decisions," IMC 100012, and "Kramer," IMC 100015, null and void ab initio. BLM determined from the location notices "both claims embrace lands within the NW 1/4 of sec. 4 T. 1 N., R. 17 E., Boise Meridian, Idaho." BLM declared the claims null and void ab initio because it stated this land was patented without a mineral reservation to the United States. In his appeal Phillips merely states that the claims "are not part of any patented mining claim and, therefore, are open to mineral entry."

Phillips and Daniel T. Henry located the mining claims on August 20, 1984, and filed notices of location with BLM on November 15, 1984, pursuant to 43 U.S.C. § 1744 (1982). The location notices for the claims state that

corner monument No. 1 of each claim is situated in the NW 1/4 sec. 4, T. 1 N., R. 17 E., Boise Meridian; however, the location notices do not state the entire mining claims are situated within this quarter section. The maps accompanying the location notices show the Decisions mining claim is located on land entirely within the NW 1/4 of sec. 4. The Master Title Plat (MTP) shows all this land is patented without a mineral reservation to the United States. The N 1/2 NW 1/4 of sec. 4, is a part of patent 296; the SW 1/4 NW 1/4 part of patent 393295; and the SE 1/4 NW 1/4 included in patent 426449. <sup>1/</sup> Thus, all the land embraced by the Decisions mining claim is patented.

The Kramer mining claim is depicted, according to the locators' maps, as cutting diagonally across land within the following quarter-quarter sections:

NW 1/4 NW 1/4, Sec. 4, T. 1 N., R. 17 E.,  
 NE 1/4 NE 1/4, Sec. 5, T. 1 N., R. 17 E.,  
 SE 1/4 SE 1/4, Sec. 32, T. 2 N., R. 17 E.,  
 SW 1/4 SW 1/4, Sec. 33, T. 2 N., R. 17 E.,  
 B.M., Idaho.

It appears from the MTP that the part of the land embraced by the Kramer mining claim which is located within secs. 4 and 5 is included in patents 296 and 393295, respectively. However, that small fractional part of the claim within secs. 32 and 33, is located on unpatented land.

As to the land in secs. 32 and 33, which embraces the Kramer mining claim, the MTP lists the following designation, "1 07862, PL 167." The MTP states "1 07862 Det PL 167 (Act of Cong. 7/23/1955) completed 6/22/1960. All PD surface Mgmt. by BLM excluding [certain mining claims]."

This notation references the Surface Resources Act of July 23, 1955, 30 U.S.C. §§ 601-615 (1982), which provides that as to unpatented mining claims located after the Act, with certain exceptions, the United States has the right to manage and dispose of the surface resources to the extent not inconsistent with developing the mining claims. 30 U.S.C. § 601 (1982). In addition, the Act establishes a procedure where the surface management agency may file a request for publishing a notice to miners to determine surface rights to existing claims. 30 U.S.C. § 613 (1982). These miners are given 150 days from the first publication notice to assert rights to the surface resources. 30 U.S.C. § 613(b) (1982). See also 43 CFR Subpart 3712. In addition, this Act provides that common varieties of sand, stone, gravel, pumice, pumicite or cinders are not locatable minerals. 30 U.S.C. § 611 (1982). The MTP reveals a surface rights determination for the lands was completed June 22, 1960. However, there is no indication from the MTP that the land in secs. 32 and 33 embraced by the Kramer mining claim is unavailable for location and entry under the mining laws.

[1] Mining claims wholly located on lands patented without a mineral reservation to the United States are properly declared null and void

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<sup>1/</sup> The MTP also shows all or part of three other patents (Nos. 8058, 8059 and 8060) included within the NW 1/4 of sec. 4.

ab initio. Timberline Mining Co., 87 IBLA 264, 265 (1985). Accordingly, BLM properly declared the Decisions mining claim null and void ab initio.

The validity of a lode mining claim located partially on withdrawn or patented lands depends on whether the discovery point is on land open to mineral location. A locator whose discovery is on land open to mineral location may extend the end lines and side lines of his claim across patented or withdrawn lands to define the extralateral rights to lodes or veins which apex within the claim. However, the locator will not have surface rights to these lands and depending on the circumstances may or may not have mineral rights in the subsurface land. Donald R. Rowley, 89 IBLA 248, 249 (1985); Timberline Mining Co., 87 IBLA at 265; Santa Fe Mining, Inc., 79 IBLA 48 (1984).

BLM may adjudicate the validity of such mining claims only by initiating a mining claim contest because the position of a discovery is a matter of fact that cannot be determined by reference to a notice of location filed under 43 U.S.C. § 1744 (1982). Timberline Mining Co., 87 IBLA at 265; Western Nuclear, Inc., 82 IBLA 67 (1984).

According to the records the Kramer mining claim is located partly on land available for entry and partly on land patented with no mineral reservation to the United States. The validity of this claim cannot be determined absent a mining claim contest. BLM improperly declared this mining claim null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, and reversed in part.

Bruce R. Harris  
Administrative Judge

We concur:  
James L. Burski  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge.

